

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND)
COMPOUNDING PHARMACY, INC.)
PRODUCTS LIABILITY LITIGATION)
This Document Relates to:) MDL No. 1:13-md-2419
All Actions Involving the Saint Thomas)
Clinic Defendants)
Judge Rya Zobel)

**PLAINTIFFS' STEERING COMMITTEE'S MOTION TO STRIKE SUPPLEMENTAL
MIXON REPORT**

For the reasons set forth in the accompanying Memorandum, the Plaintiffs' Steering Committee hereby moves the Court under Rule 37(c) to strike the supplemental report of William Mixon, which was untimely served on April 4, 2016. As explained the accompanying Memorandum, the defendants improperly seek to disclose a common issue opinion from Mr. Mixon three months after the Court-ordered deadline for doing so and weeks after the close of the common issue deposition deadline. The defendants' untimely disclosure violates the Court's Rule 26 expert disclosure schedule, it is not substantially justified, and it is not harmless. Therefore, under Rule 37, the Court must strike the untimely report and preclude the defendants from relying upon the new opinion expressed by Mr. Mixon within it.

Date: April 26, 2016

Respectfully submitted:

s/ Benjamin A. Gastel
J. Gerard Stranch, IV
Benjamin A. Gastel
Anthony A. Orlandi
BRANSTETTER, STRANCH &
JENNINGS, PLLC
223 Rosa L. Parks Ave., Suite 200
Nashville, TN 37203
Telephone: 615/254-8801
Facsimile: 615/255-5419
gerards@bsjfirm.com

beng@bsjfirm.com
aorlandi@bsjfirm.com

Plaintiffs' Steering Committee and TN Chair

Thomas M. Sobol
Kristen Johnson Parker
HAGENS BERMAN SOBOL SHAPIRO, LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
Telephone: 617/482-3700
Facsimile: 617/482-3003
tom@hbsslaw.com
kristenjp@hbsslaw.com

Plaintiffs' Lead Counsel

Annika K. Martin
Mark P. Chalos
LIEFF CABRASER, HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013
Telephone: 212/355-9500
Facsimile: 212/355-9592
akmartin@lchb.com
mchalos@lchb.com

Federal/State Liaison

Marc E. Lipton
LIPTON LAW
18930 W. 10 Mile Road
Southfield, MI 48075
Telephone: 248/557-1688
Facsimile: 248/557-6344
marc@liptonlaw.com

Kimberly A. Dougherty
JANET, JENNER & SUGGS, LLC
31 St. James Avenue, Suite 365
Boston, MA 02116
Telephone: 617/933-1265
kdougherty@myadvocates.com

Mark Zamora
ZAMORA FIRM
6 Concourse Parkway, 22nd Floor

Atlanta, GA 30328
Telephone: 404/451-7781
Facsimile: 404/506-9223
mark@markzamora.com

Patrick T. Fennell (VSB 40393)
CRANDALL & KATT
366 Elm Avenue, S.W.
Roanoke, VA 24016
Telephone: 540/342-2000
Facsimile: 540/400-0616
pfennell@crandalllaw.com

Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, Benjamin A. Gastel, hereby certify that I caused a copy of the foregoing document to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Date: April 25, 2016

/s/ Benjamin A. Gastel

Benjamin A. Gastel

